

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

ROBERT ZEBULON ZARITZ,

Plaintiff,

v.

MARY VEST,

Defendant.

No. 2:24-cv-00018-AGF

MEMORANDUM AND ORDER

This matter comes before the Court on self-represented plaintiff Robert Zebulon Zaritz's untitled motion to add two defendants, Warden Clay Stanton and Unit Manager Henderson, to this action. *See* ECF No. 11 at 5-6. For the following reasons, the Court will deny this request.

Under Federal Rule of Civil Procedure 15(a)(1), “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of the responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(1)(2).

Here, the record reveals an individual named “Sheri Best” was served by the U.S. Marshals Service on April 18, 2024. ECF No. 10. It appears, perhaps, the plaintiff incorrectly spelled the defendant’s name as “Mary Vest.” As of the date of this Memorandum and Order, the defendant has not filed her responsive pleading. Thus, pursuant to Fed. R. Civ. P. 15, plaintiff does not need permission of the Court to file an amended complaint at this time. Because no responsive pleading

or motion has been filed, under the rules, plaintiff may file an amended complaint without permission from the Court. As such, the request will be denied as moot.

To the extent plaintiff is attempting to amend the complaint by motion without filing a first amended complaint, the motion must be denied. The Court does not accept amendments by interlineation (*e.g.*, by adding parties or language to the pending complaint) because it creates confusion in the record, especially for the responding party. Further, supplements to a complaint are not recognized pleadings under Rule 7(a) of the Federal Rules of Civil Procedure.

If plaintiff wishes to amend his complaint to add defendants and claims, he must file an amended complaint within the time provided by Rule 15 of the Federal Rules of Civil Procedure or, if filed outside of the time permitted to do so without leave, he must then file a motion with a proposed amended complaint attached. *See Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 497 (8th Cir. 2008); *Clayton v. White Hall Sch. Dist.*, 778 F.2d 457, 460 (8th Cir. 1985). The Court recognizes that plaintiff is representing himself in these proceedings, but even *pro se* plaintiffs are expected to follow the Federal Rules of Civil Procedure. *See Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856-57 (8th Cir. 1996).

The Court warns plaintiff that an amended complaint replaces the original complaint and failure to name a party or include a claim will result in the dismissal of that party or claim. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005) (parties and claims that are not re-alleged in the newly amended complaint will be deemed abandoned). Because plaintiff is self-represented, any amended complaint should be filed on a Court-provided form. *See* E.D. Mo. Local Rule 2.06(A) (“All actions brought by self-represented plaintiffs . . . should be filed on Court-provided forms where applicable . . . [T]he Court . . . may order the pro

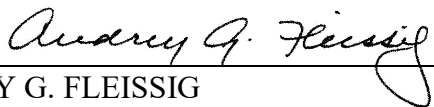
se plaintiff . . . to file the action on a Court-provided form”). If plaintiff files an amended complaint, he should ensure that the defendants names are spelled correctly and that the claims asserted against each defendant are clearly stated.

The Court will review all subsequent complaints pursuant to 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to add defendants to the amended complaint [ECF No. 11] is **DENIED**.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff two blank Prisoner Civil Rights Complaint forms. Plaintiff may request additional forms as needed.



AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 16th day of May, 2024.